

VIA EFS

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Art Unit: 2872
Examiner: Jennifer L. Doak
Applicant(s): Roland Oehmann
Serial No: 10/561,352
Filing Date: February 15, 2007
Attorney Docket No: 7742.3011.001
For: EXTERNAL REARVIEW MIRROR FOR VEHICLES,
PREFERABLY MOTOR VEHICLES

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

On August 5, 2010, Appellant filed a Notice of Appeal of a Final Rejection in the Final Office Action mailed May 5, 2010. This appeal covers claims 25 and 27–32 which were rejected on anticipation grounds, and is being filed in support of the appeal.

TABLE OF CONTENTS

	<u>Page</u>
Table of Contents.....	ii
I. Real Party in Interest.....	1
II. Related Appeals and Interferences.....	1
III. Status of the Claims.....	1
IV. Status of the Amendments.....	1
V. Summary of the Claimed Subject Matter.....	2
VI. Grounds of Rejection to be Reviewed on Appeal.....	3
VII. Argument.....	4
i) Lang et al. Fails to Disclose the Insertion Opening.....	6
ii) Lang et al. Fails to Disclose the Snap-in Tongue and Catch Recess....	7
Conclusion.....	10
VIII. Claims Appendix.....	11
IX. Evidence Appendix.....	13
X. Related Proceedings Appendix.....	23

I - Real Party in Interest

The real party in interest is the assignee of the Applicants' Inventor who assigned all of their right, title, and interest to SMR Patents S.à.r.l., a corporation organized and existing under the laws of Luxembourg and having a place of business at Le Dome, 2-8 Avenue Charles de Gaulle, L-1653 Luxembourg.

II - Related Appeals and Interferences

There are no related appeals and/or interferences known to Appellants, their assignee, and/or legal representatives that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III - Status of the Claims

Claims 25 and 27–32 are pending. Claims 25 and 27–32 are rejected under 35 U.S.C. § 102(b). Claims 1–24 and 26 were cancelled. Claims 25 and 27–32 are being appealed.

IV - Status of the Amendments

This Appeal Brief reflects the claims as they appear in the Response to the Non-Final Office Action mailed October 26, 2009. Applicants have not filed an amendment subsequent to the Final Office Action mailed May 5, 2010.

V – Summary of the Claimed Subject Matter

Under 37 C.F.R. § 41.37(c)(1)(v), Appellants are providing a concise explanation of subject matter defined in each of the independent claims involved in this appeal, with reference to the specification by page, paragraph, and line numbers, and to the drawings by figure number. This explanation is provided to comply with the requirements of 37 C.F.R. § 41.37(c)(1)(v) in order to assist the Board in evaluating the appeal, and is not intended to limit the meaning or definition of any terms in the claims. It should be appreciated that the below-provided references are only for illustrative purposes, as other instances and/or embodiments of the claimed elements could appear elsewhere in the application.

Independent claim 25 recites an outside rear view mirror assembly (1) {Figs. 1, 4, 5, 10; page 3, ¶ [0019], lines 1–5} for a motor vehicle. The outside rear view mirror assembly (1) comprises a mirror housing (2) including a circumferential lateral wall (4) that defines an opening (6), an insertion opening (7), and a back wall (5) {Figs. 1, 4–12, 14; page 3, ¶ [0020], lines 1–10}. A mirror mounting bracket (3) is fixedly securable to the motor vehicle and insertable into the mirror housing (2) through the insertion opening (7) {Figs. 2–4, 6–9, 11, 12; page 3, ¶ [0020], lines 7–8; page 5, ¶ [0025], lines 1–2}. The mirror mounting bracket (3) includes a catch recess (17') {Figs. 2, 7–9, 11; page 4, ¶ [0022], line 3; page 5, ¶ [0025], line 11}. A snap-in tongue (15) defines a free end and extends out from the back wall (5) within the mirror housing (2) {Figs. 1, 4, 5, 7–11; page 4, ¶ [0022], lines 1–2; pages 6–7, ¶ [0030], lines 2–7} for positive locking engagement with the catch recess (12') of the mirror mounting bracket (3) when the mirror mounting bracket (3) is inserted into the mirror housing (2) to lock said mirror mounting bracket (3) therein such that said mirror housing (2) is fixedly secured to the motor vehicle {Figs. 4, 5, 7–9, 11; page 4, ¶ [0022], lines 2–4; page 5, ¶ [0025], lines 4–6; page 5, ¶ [0025], lines 9–11; page 5, ¶ [0025], lines 14–17; page 6, ¶ [0027], lines 1–3; page 6, ¶ [0028], lines 7–8}.

VI - Grounds of Rejection to be Reviewed on Appeal

The issue on appeal is whether claims 25 and 27–32 are unpatentable under 35 U.S.C. §102(b) as being anticipated by Lang et al. (U.S. Publication No. 2002/0080506).

VII – Argument

Claims 25 and 27–32 stand rejected under 35 U.S.C. §102(b) as being anticipated by Lang et al. (U.S. Publication No. 2002/0080506). Appellants respectfully traverse the rejection for the reasons discussed below.

Claims 25 and 27–32 are Patentable over Lang et al.

Independent claim 25 recites, *inter alia*, “...a mirror housing (2) including a circumferential lateral wall (4) defining an opening (6), an insertion opening (7)...a mirror mounting bracket (3) fixedly securable to the motor vehicle and insertable into said mirror housing (2) through said insertion opening (7), said mirror mounting bracket (3) including a catch recess (17')...[and]...a snap-in tongue (15)...extending out from said back wall (5) within said mirror housing (2) for positive locking engagement with said catch recess (12') of said mirror mounting bracket (3) when said mirror mounting bracket (3) is inserted into said mirror housing....”

Referring to Fig. 3 reproduced below, Lang et al. teaches a rear view mirror with a mirror housing framing 4 and a mirror housing cover 5.¹ The rear view mirror is clamped to a holder tube 10, which, based on another reference filed on behalf of Lang and owned by a common assignee², is a tube that extends through the entire mirror housing cover 5 whereby both ends of the tube are secured to the motor vehicle by way of the mirror housing framing 4 and a clamping bracket 12.³ Hook elements 18 of the clamping bracket 12 fit into corresponding hook openings 22 of the mirror housing framing 4, and screw fastenings 24 (shown in Fig. 2) also connect the clamping bracket 12 to the mirror housing framing 4.⁴ Further, a mirror element 6 is connected to the clamping bracket 12 by means of four screw connections 26.⁵

¹ Lang et al., U.S. Publication No. 2002/0080506, page 1, ¶ [0019], line 4

² United States Design Patent D452,671 S, Section IX, Evidence Appendix.

³ *Id.* at page 2, ¶ [0019], lines 6–10

⁴ *Id.* at page 2, ¶ [0020], lines 13–17

⁵ *Id.* at page 2, ¶ [0021], lines 1–8

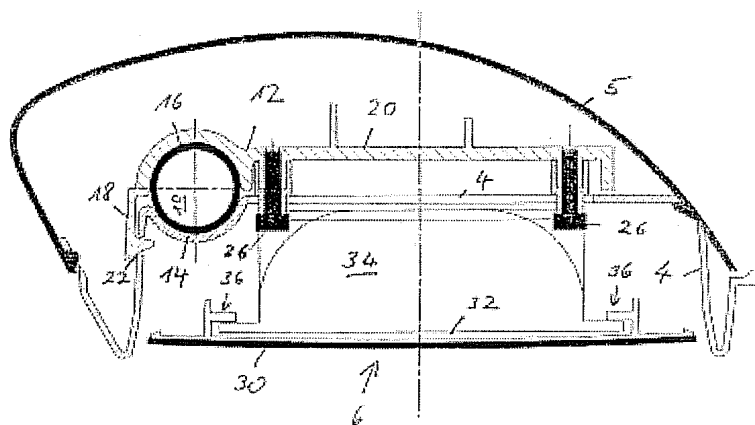


Figure 3

Under §102(b), an invention is not patentable if it was described in a printed publication more than one year before the date of the application for patent.⁶ The established law requires that a single printed publication, or reference, disclose each element of the claim.⁷ It is not enough, however, that the reference simply discloses all the elements in isolation. Rather, the established law also requires that the reference disclose each element as arranged in the claim.⁸ Also, the Manual of Patent Examining Procedure (MPEP) and the Court of Appeals for the Federal Circuit (CAFC) instruct that during patent examination process the pending claims must be given their broadest reasonable interpretation that is consistent with the specification.⁹

Appellants believe that the rejection subject to this appeal is based on reversible error, and that claims 25 and 27–32 are patentable over Lang et al., because Lang et al. fails to disclose the recitation related to i) the insertion opening, and ii) the snap-in tongue and catch recess.

⁶ 35 U.S.C. §102(b)

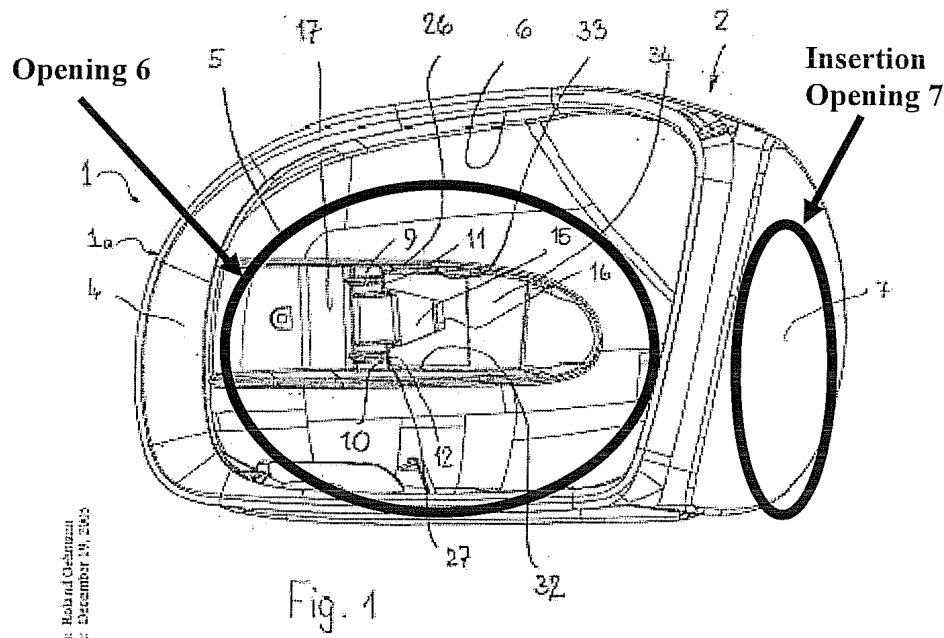
⁷ *W.L. Gore & Assocs. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983)

⁸ *Lindemann Maschinenfabrik, GmbH v. Am. Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984)

⁹ MPEP 2111; *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005)

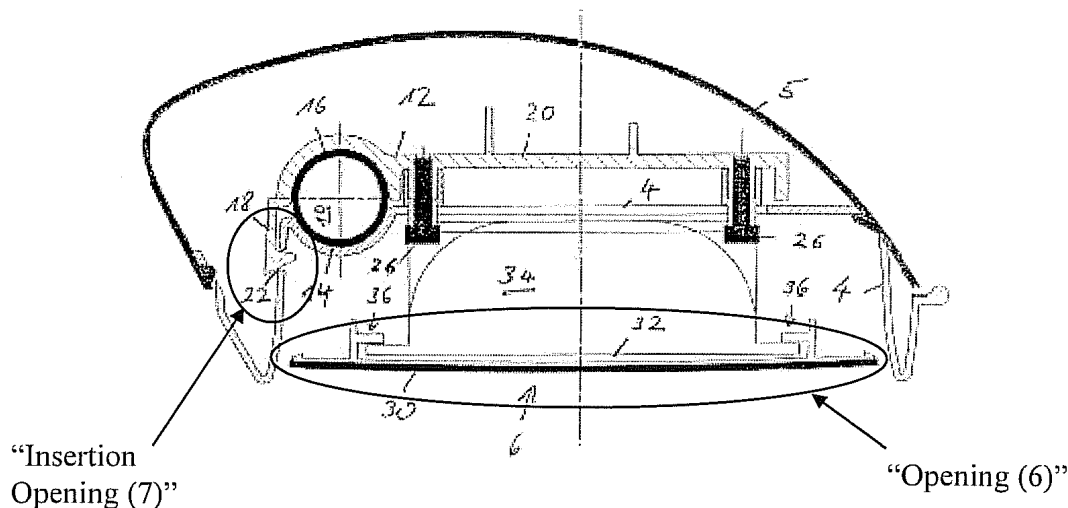
i) **Lang et al. Fails to Disclose the Insertion Opening**

The relevant recitation in claim 25 is “...a mirror housing (2) including a circumferential lateral wall (4) defining an opening (6), an insertion opening (7)...a mirror mounting bracket (3) fixedly securable to the motor vehicle and insertable into said mirror housing (2) through said insertion opening (7)....” For reference purposes, Appellants are reproducing an annotated version of Fig. 1 below of their application that shows the insertion opening 7 and the opening 6.



Referring now to an annotated version of Fig. 3 reproduced below, the Final Office Action mailed May 5, 2010 points to the space where the mirror resides as the recited “opening (6),” and points to the hook opening 22 in Lang et al. as the recited “insertion opening (7).”¹⁰

¹⁰ Final Office Action 05/05/10, page 2, line 10



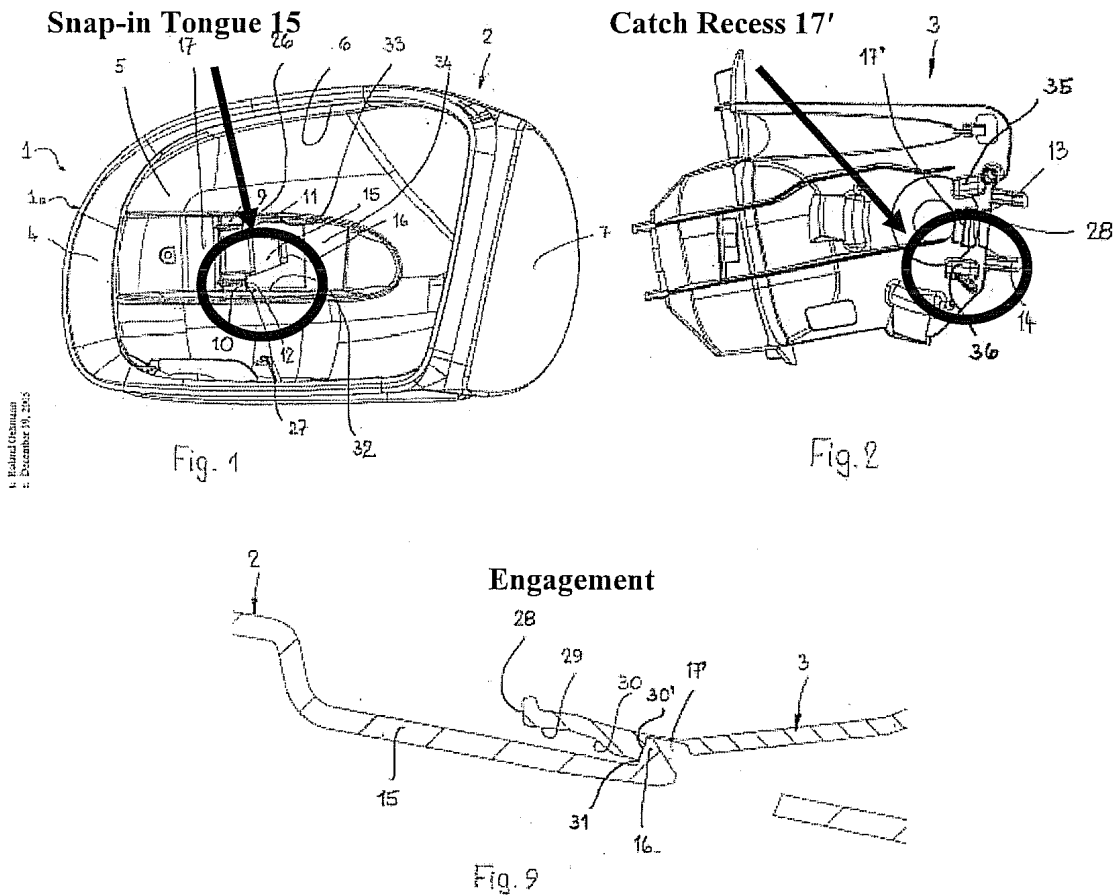
While the space where the mirror resides may indeed constitute the recited opening, the hook opening 22 of Lang et al. cannot reasonably be interpreted to constitute the recited insertion opening consistent with the Appellants' claim language and their specification.

The claim language recites that the mirror mounting bracket is insertable into the mirror housing through the insertion opening. Nothing resembling a mirror mounting bracket in Lang et al. can be inserted into its hook opening 22, and, if anything, Lang et al.'s mirror housing framing 4 is inserted into the mirror housing cover 5 by way of the space where the mirror element 6 resides. And the Appellants' specification teaches an insertion opening 7 that is sized for inserting the mirror mounting bracket 3. The hook opening 22 of Lang et al. is not sized for inserting a mirror mounting bracket. Independent claim 25 clearly does not read on any embodiment of Lang et al.

ii) **Lang et al. Fails to Disclose the Snap-in Tongue and Catch Recess**

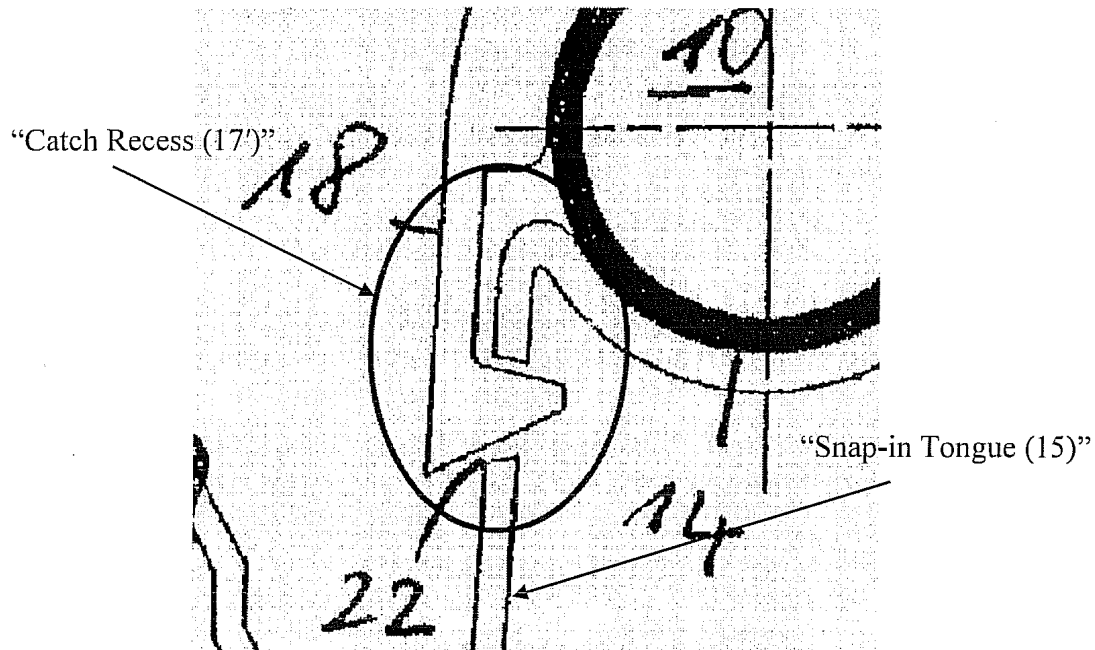
The relevant recitation in claim 25 is "...said mirror mounting bracket (3) including a catch recess (17')...[and]...a snap-in tongue (15)...extending out from said back wall (5) within said mirror housing (2) for positive locking engagement with said catch recess (12') of said mirror mounting bracket (3) when said mirror mounting bracket (3) is inserted into said mirror housing...." For reference purposes, Appellants are

reproducing annotated versions of Figs. 1, 2, and 9 below of their application that show the catch recess 17', the snap-in tongue 15, and their engagement.



Referring now to a portion of Fig. 2 below that was provided in the Final Office Action mailed May 5, 2010 and that Appellants have annotated only with lead lines and text, the Final Office Action points to the part of the clip recessed behind the pointed projection that allows connection with 22 as the recited “catch recess (17’),” and points to the clip extending from 5 as the recited “snap-in tongue (15).”¹¹

¹¹ *Id.* at page 2, lines 13–15, and page 3, line 1



But the pointed-to-parts of Lang et al. cannot reasonably be interpreted to constitute the recited catch recess and snap-in tongue consistent with the Appellants' claim language and their specification.

The claim language recites that the snap-in tongue of the housing positively locks and engages the catch recess of the bracket. Rather, if anything, the pointed-to-parts of Lang et al. have the opposite construction. That is, the hook elements 18 of the clamping bracket 12 are effectively a part of the mirror housing frame 4 and it is this portion of the mirror housing frame 4 that engages the hook openings 22 of the mirror housing framing 4. While the clamping bracket 12 clamps down on the tube 10, it does not positively engage the mirror housing frame 4. In other words, Lang et al. discloses an invention that has the mirror housing frame 4 engage itself in order to clamp down on itself to create a friction fit with the tube/mirror bracket 10. Lang et al. does not teach a system that includes positive engagement between the housing frame and the mirror bracket. Whereas, Appellants' specification teaches the construction that is consistent with the claim language and that is the opposite construction of Lang et al.

Conclusion

Appellants respectfully request that the Board reverse the final rejection of claim 25 because Lang et al. does not disclose each element of claim 25. Appellants also respectfully request that the Board reverse the final rejection of claims 27–32 because they depend from claim 25.

Respectfully Submitted,

/david j simonelli/

David J. Simonelli, Reg. No. 36680
Reising Ethington P.C.
755 W. Big Beaver Road, Suite 1850
Troy, Michigan 48084
248-689-3500

Date: October 4, 2010

VIII - Claims Appendix

25. An outside rear view mirror assembly (1) for a motor vehicle, said outside rear view mirror assembly (1) comprising:

a mirror housing (2) including a circumferential lateral wall (4) defining an opening (6), an insertion opening (7), and a back wall (5);

a mirror mounting bracket (3) fixedly securable to the motor vehicle and insertable into said mirror housing (2) through said insertion opening (7), said mirror mounting bracket (3) including a catch recess (17'); and

a snap-in tongue (15) defining a free end and extending out from said back wall (5) within said mirror housing (2) for positive locking engagement with said catch recess (17') of said mirror mounting bracket (3) when said mirror mounting bracket (3) is inserted into said mirror housing (2) to lock said mirror mounting bracket (3) therein such that said mirror housing (2) is fixedly secured to the motor vehicle.

27. An outside rear view mirror assembly (1) as set forth in claim 25 wherein said snap-in tongue (15) includes a catch piece (16) at said free end thereof to engage said catch recess (17').

28. An outside rear view mirror assembly (1) as set forth in claim 27 wherein said mirror mounting bracket (3) includes a positive locking component (13) extending out from said mirror mounting bracket (3) to guide said mirror mounting bracket (3) as it is inserted into said mirror housing (2).

29. An outside rear view mirror assembly (1) as set forth in claim 28 wherein said back wall (5) of said mirror housing (2) includes an insertion tunnel (11) for receiving said positive locking component therein.

30. An outside rear view mirror assembly (1) as set forth in claim 29 wherein said positive locking component (13) includes a stop (24) for abutting said insertion tunnel (11) preventing said catch piece (16) from moving past said catch recess (17').

31. An outside rear view mirror assembly (1) as set forth in claim 30 wherein said catch recess (17') includes an angled surface (31) to abut and engage said catch piece (16).

32. An outside rear view mirror assembly (1) as set forth in claim 27 wherein said catch piece (16) extends laterally across said snap-in tongue (15).

IX - Evidence Appendix

United States Design Patent D452,671.



US00D452671B1

(12) **United States Design Patent** (10) Patent No.: **US D452,671 S**
Lang (45) Date of Patent: **Jan. 1, 2002**

(54) **REAR-VIEW MIRROR MOUNTING ASSEMBLY**

FOREIGN PATENT DOCUMENTS

DE 3614927 A1 * 11/1987

(75) Inventor: **Heinrich Lang, Ergersheim (DE)**

OTHER PUBLICATIONS

(73) Assignee: **Lang-Mekra North America, LLC, Ridgeway, SC (US)**

Mekra Brochure, Mekra Rangau Plastics GmbH & I C. KG, pp. 1-3 and 15-57, Dec. 1995.

(**) Term: **14 Years**

Primary Examiner—Cathy Anne MacCormac

(74) *Attorney, Agent, or Firm*—Dority & Manning, P.A.

(21) Appl. No.: **29/134,883**

(57) **CLAIM**

(22) Filed: **Jan. 2, 2001**

The ornamental design for rear-view mirror mounting assembly, as shown and described.

Related U.S. Application Data

DESCRIPTION

(63) Continuation of application No. 29/092,750, filed on Aug. 26, 1998, now abandoned.

FIG. 1 is a top front perspective view of a rear-view mirror mounting assembly showing my new design;

FIG. 2 is a front elevational view thereof;

FIG. 3 is a rear elevational view thereof;

FIG. 4 is a top view thereof;

FIG. 5 is a bottom view thereof;

FIG. 6 is a right side elevational view thereof;

FIG. 7 is a left side elevational view thereof;

FIG. 8 is a top front perspective view of the rear-view mirror mounting assembly of FIG. 1, showing an alternate mirror and mirror housing in dotted lines;

FIG. 9 is a top front perspective view of the rear-view mirror mounting assembly of FIG. 1, showing another alternate mirror and mirror housing in dotted lines;

FIG. 10 is a top front perspective view of the rear-view mirror mounting assembly of FIG. 1, showing another alternate mirror and mirror housing in dotted lines;

FIG. 11 is a top front perspective view of the rear-view mirror mounting assembly of FIG. 1, showing another alternate mirror and mirror housing in dotted lines;

FIG. 12 is a top front perspective view of the rear-view mirror mounting assembly of FIG. 1, showing another alternate mirror and mirror housing in dotted lines; and,

FIG. 13 is a top front perspective view of the rear-view mirror mounting assembly of FIG. 1, showing another alternate mirror and mirror housing in dotted lines.

The broken lines are for environmental purposes only and form no part of the claimed design.

(51) LOC (7) Cl. **12-16**
(52) U.S. Cl. **D12/187**
(58) Field of Search D12/187-189;
359/838, 842, 844, 848, 850, 855, 857,
859, 864, 867, 871-876, 879, 880

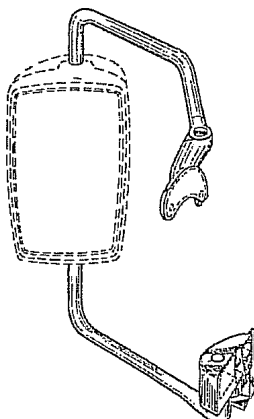
(56) **References Cited**

U.S. PATENT DOCUMENTS

2,458,117 A	1/1949	Tolbert	
3,107,077 A	10/1963	Lassa	
3,119,591 A	1/1964	Malecki	
3,170,985 A	2/1965	Katulich	
3,189,309 A	6/1965	Hager	
3,339,876 A	9/1967	Kampa	
3,346,229 A	10/1967	Carson, Jr.	
3,371,903 A	3/1968	Thompson	
3,372,897 A	3/1968	Lee	
3,375,053 A	3/1968	Ward	
3,384,334 A	5/1968	Malachowski	
3,396,158 A *	8/1968	Haug	359/873
3,408,136 A	10/1968	Travis	
3,476,464 A	11/1969	Clark	
3,563,638 A	2/1971	Panozzo	
3,637,186 A	1/1972	Greenfield	

(List continued on next page.)

1 Claim, 12 Drawing Sheets



US D452,671 S

Page 2

U.S. PATENT DOCUMENTS

4,077,597 A	3/1978	Greig	5,069,539 A	*	12/1991	Valde	359/514
4,349,247 A	9/1982	Koyama et al.	5,107,374 A	*	4/1992	Lupo et al.	359/841
4,549,786 A	10/1985	Albers et al.	5,225,943 A	*	7/1993	Lupo	359/841
4,623,115 A	11/1986	Brester	D353,795 S		12/1994	Ayala	
4,747,679 A	5/1988	Beach, Jr.	D385,243 S		10/1997	Lang	
4,778,265 A	10/1988	Fingerle et al.	D387,317 S	*	12/1997	Lang	D12/187
4,787,726 A	11/1988	Hendricks	D397,072 S		8/1998	Hellhake et al.	
4,929,074 A	5/1990	Urban	5,798,882 A	*	8/1998	Lang	359/872
D315,710 S	3/1991	Ropolo	D407,361 S	*	3/1999	Lang	D12/187
5,022,748 A	*	6/1991 Santo	D409,127 S		5/1999	Kim et al.	
		359/881					

* cited by examiner

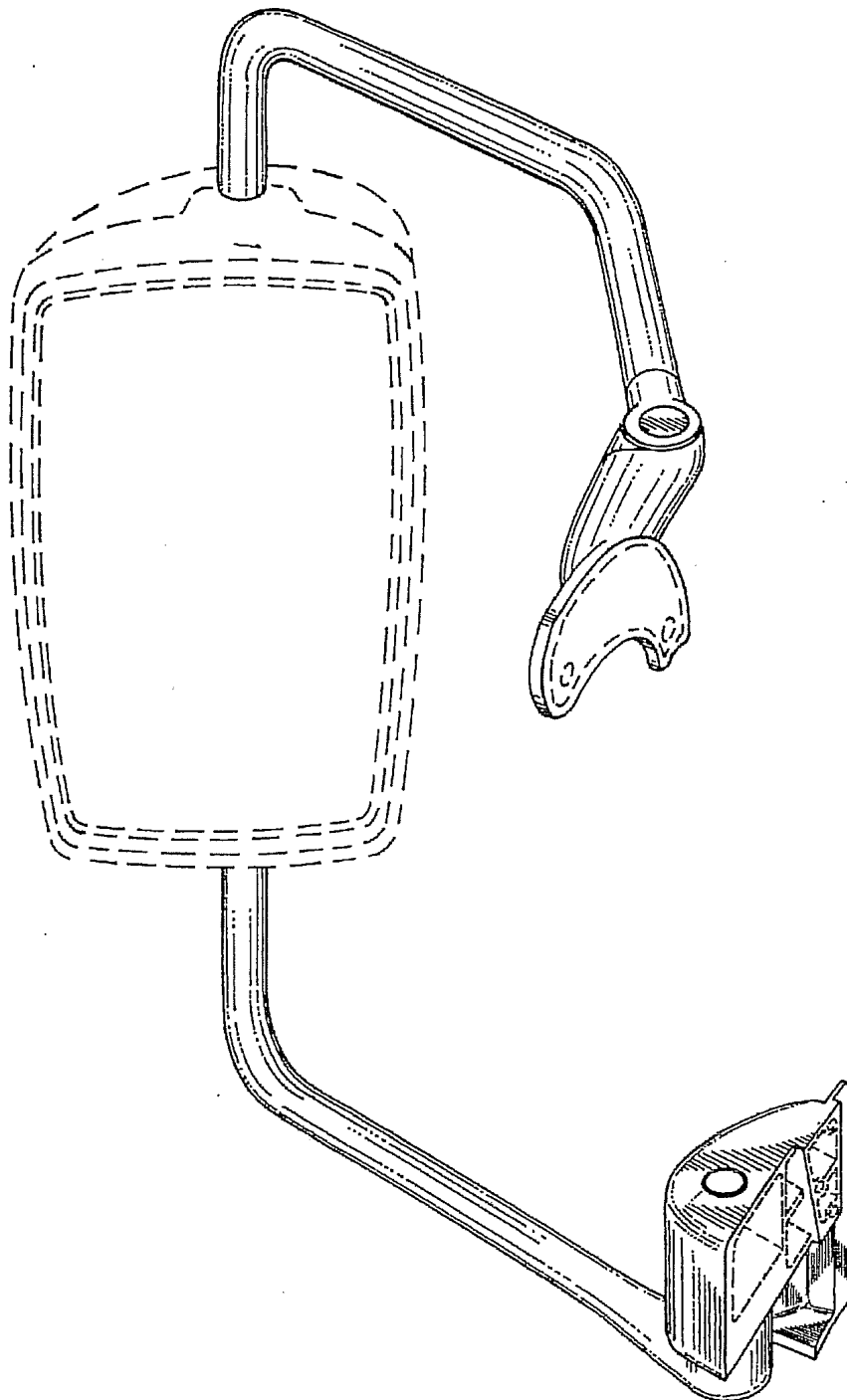


Fig. 1

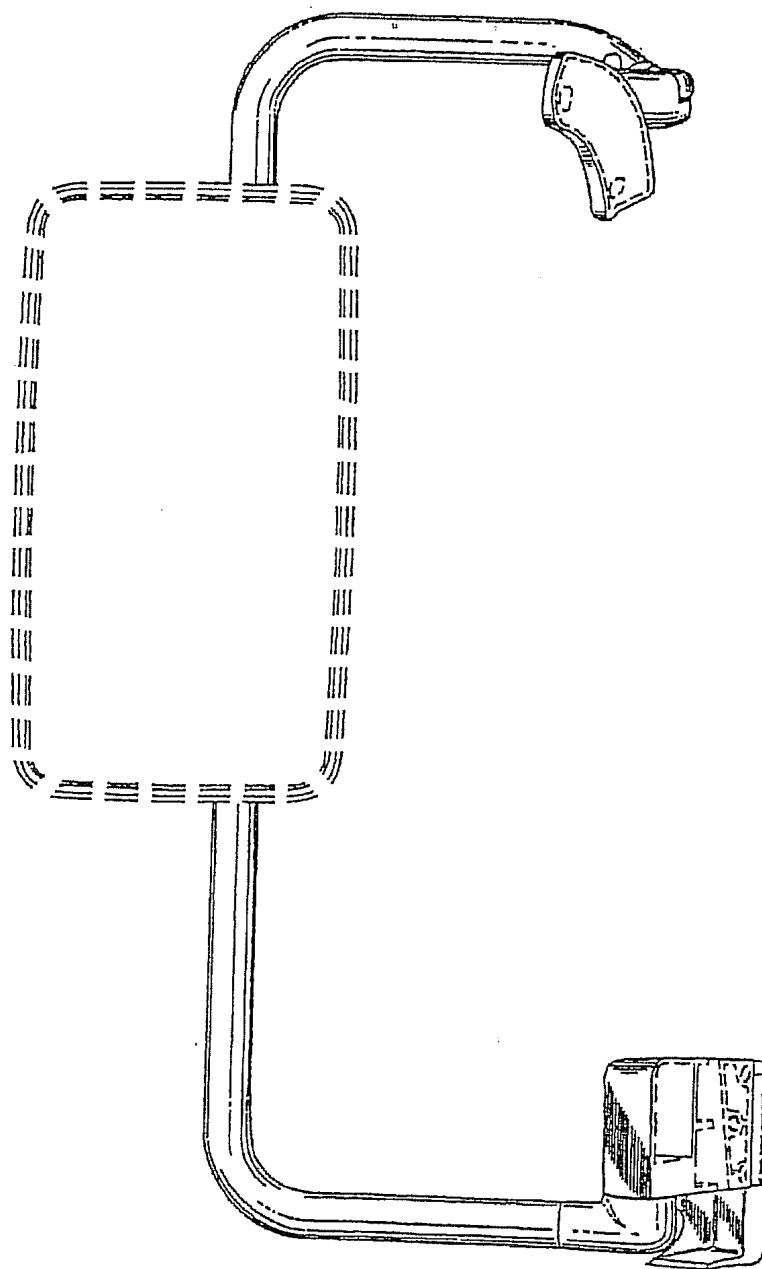


Fig. 2

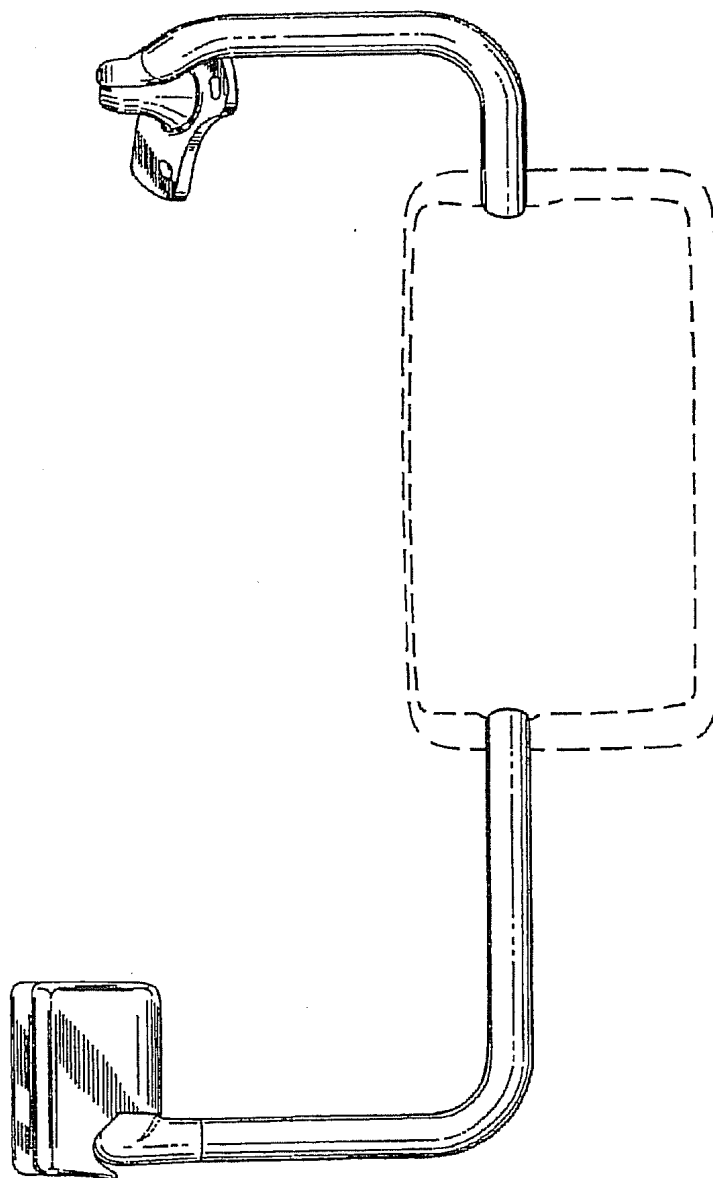


Fig. 3

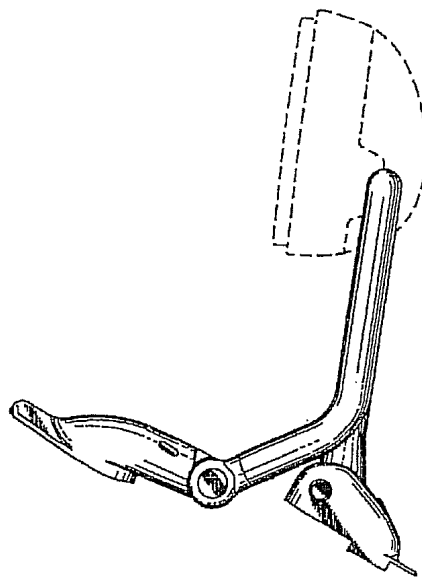


Fig. 4

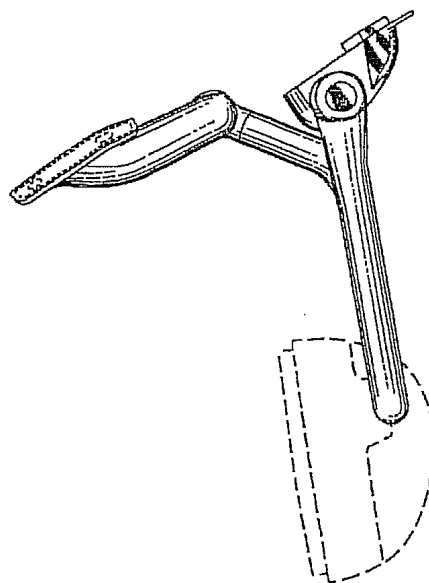


Fig. 5

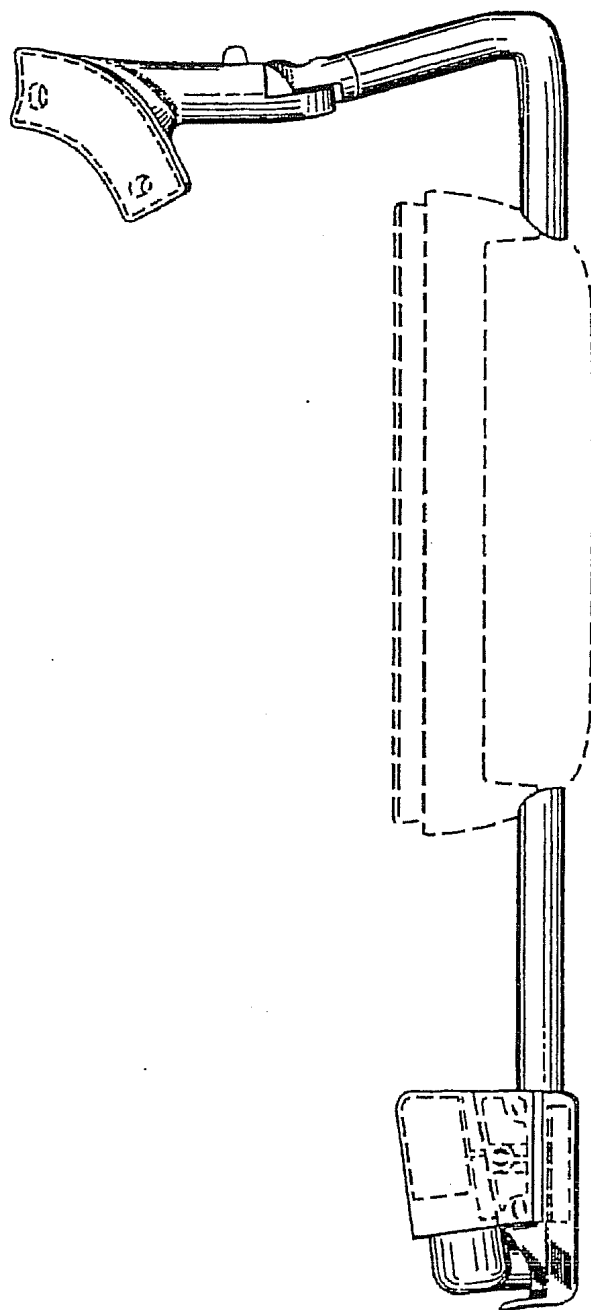


Fig. 6

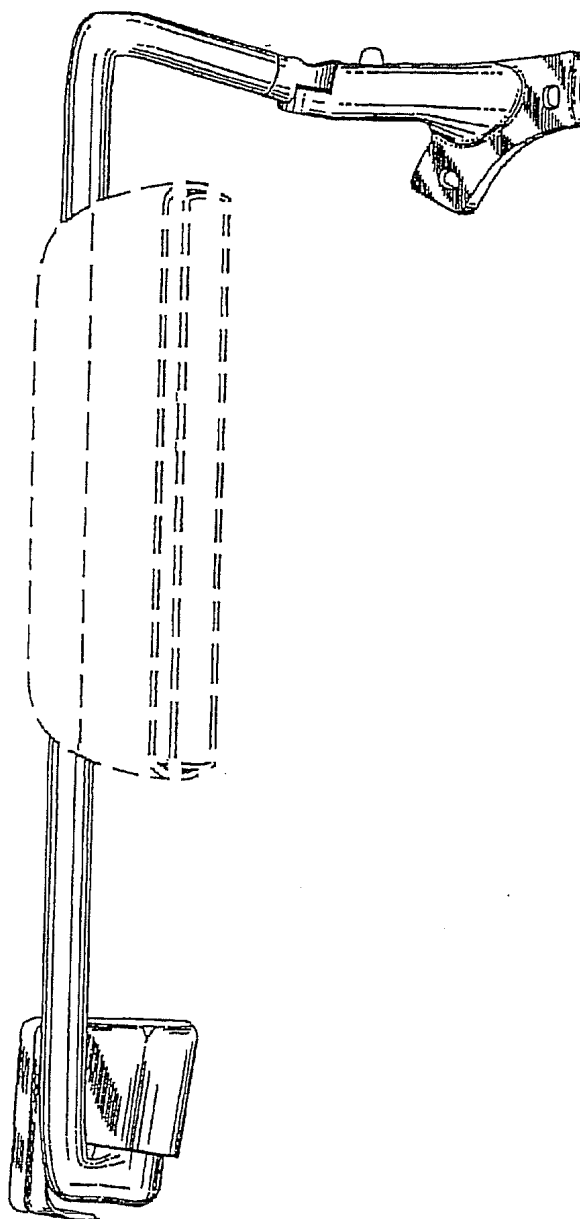


Fig. 7

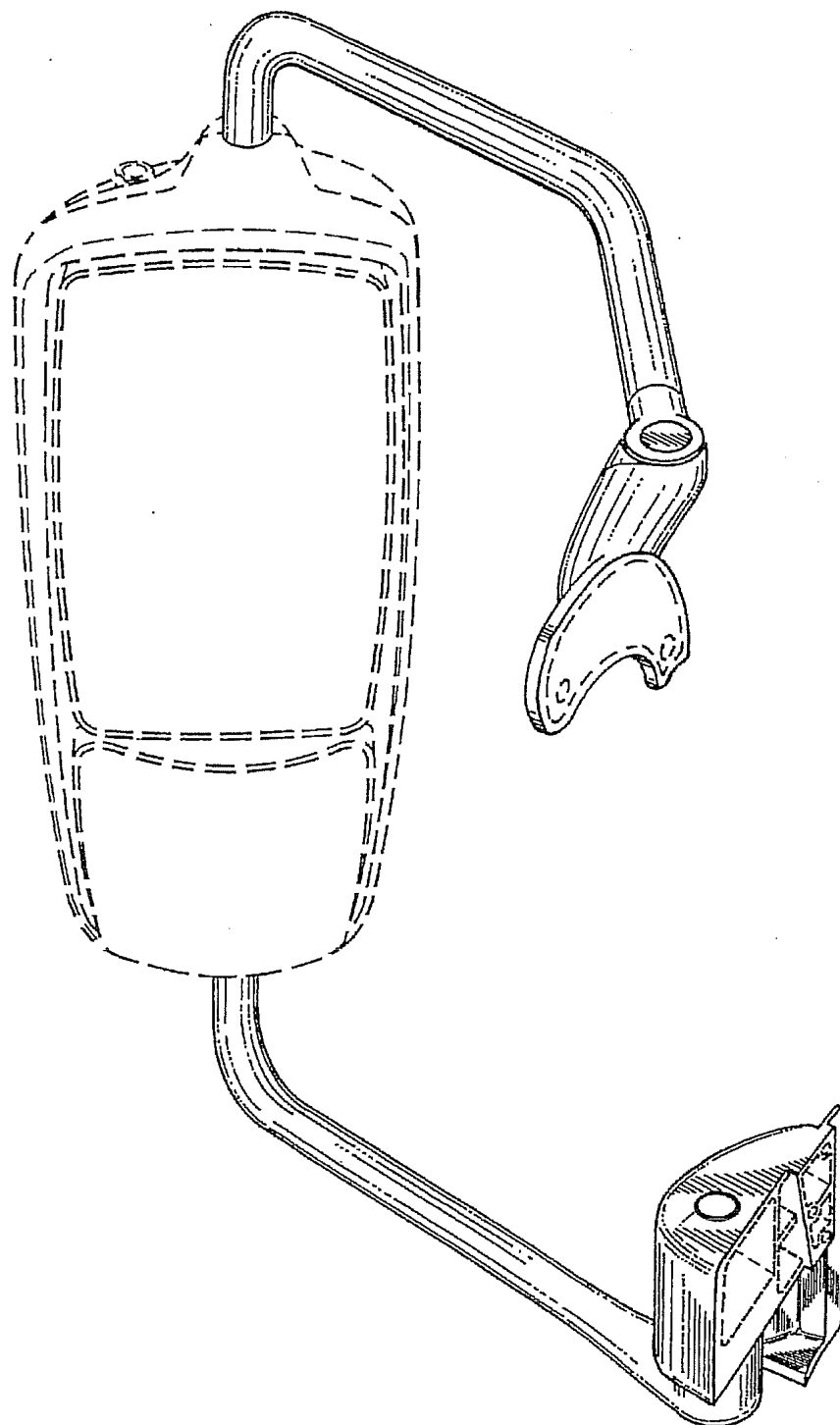


Fig. 8

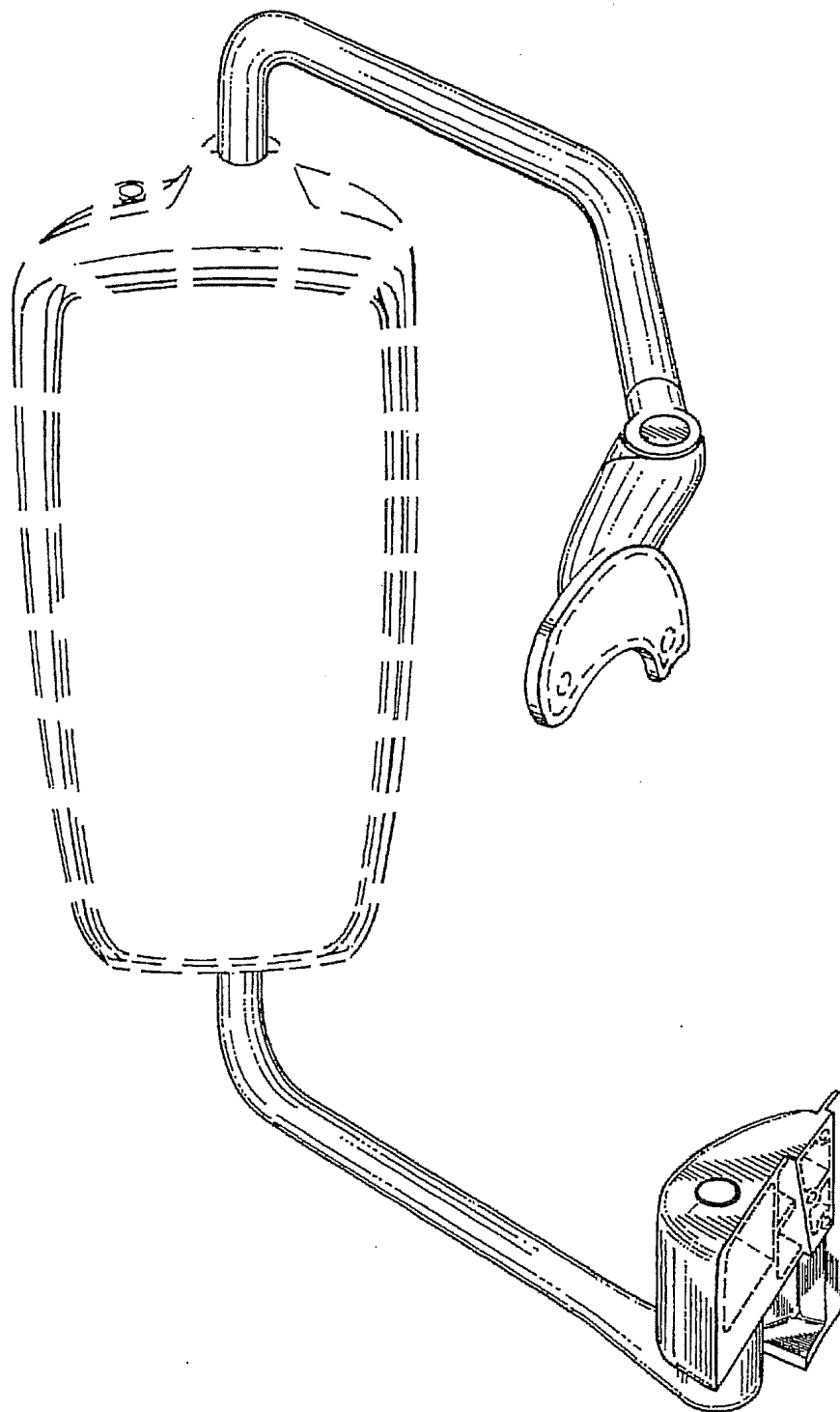


Fig. 9

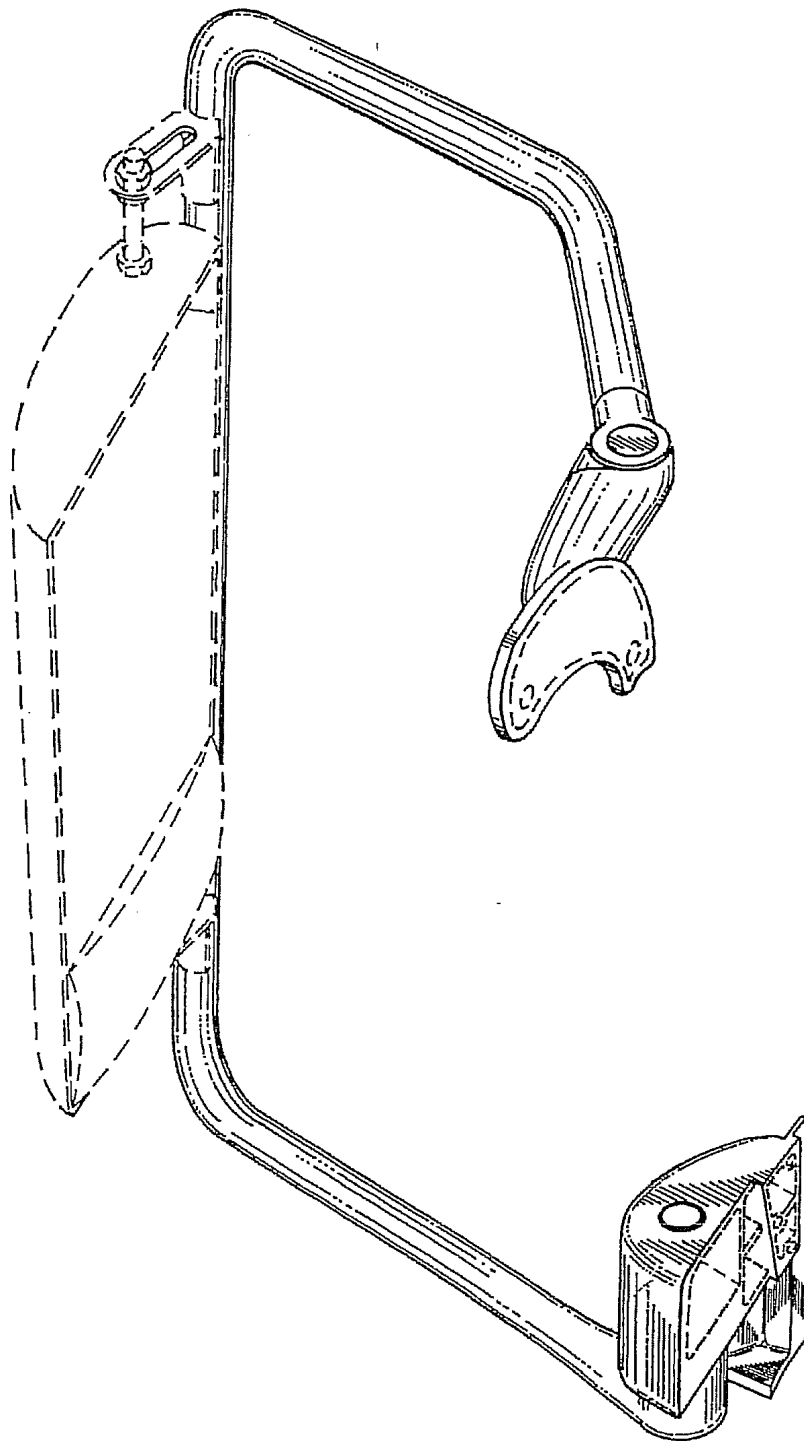


Fig. 10

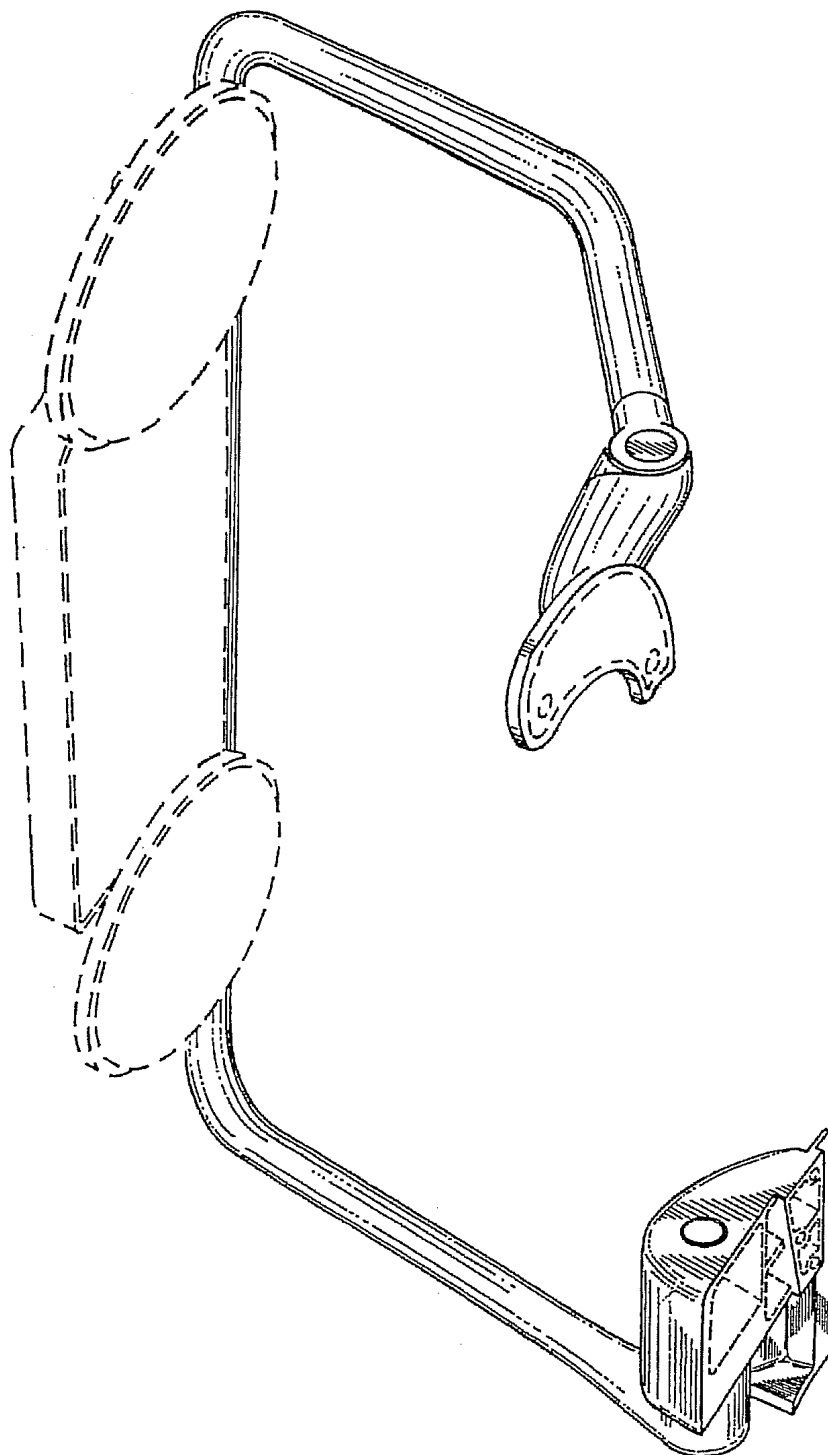


Fig. 11

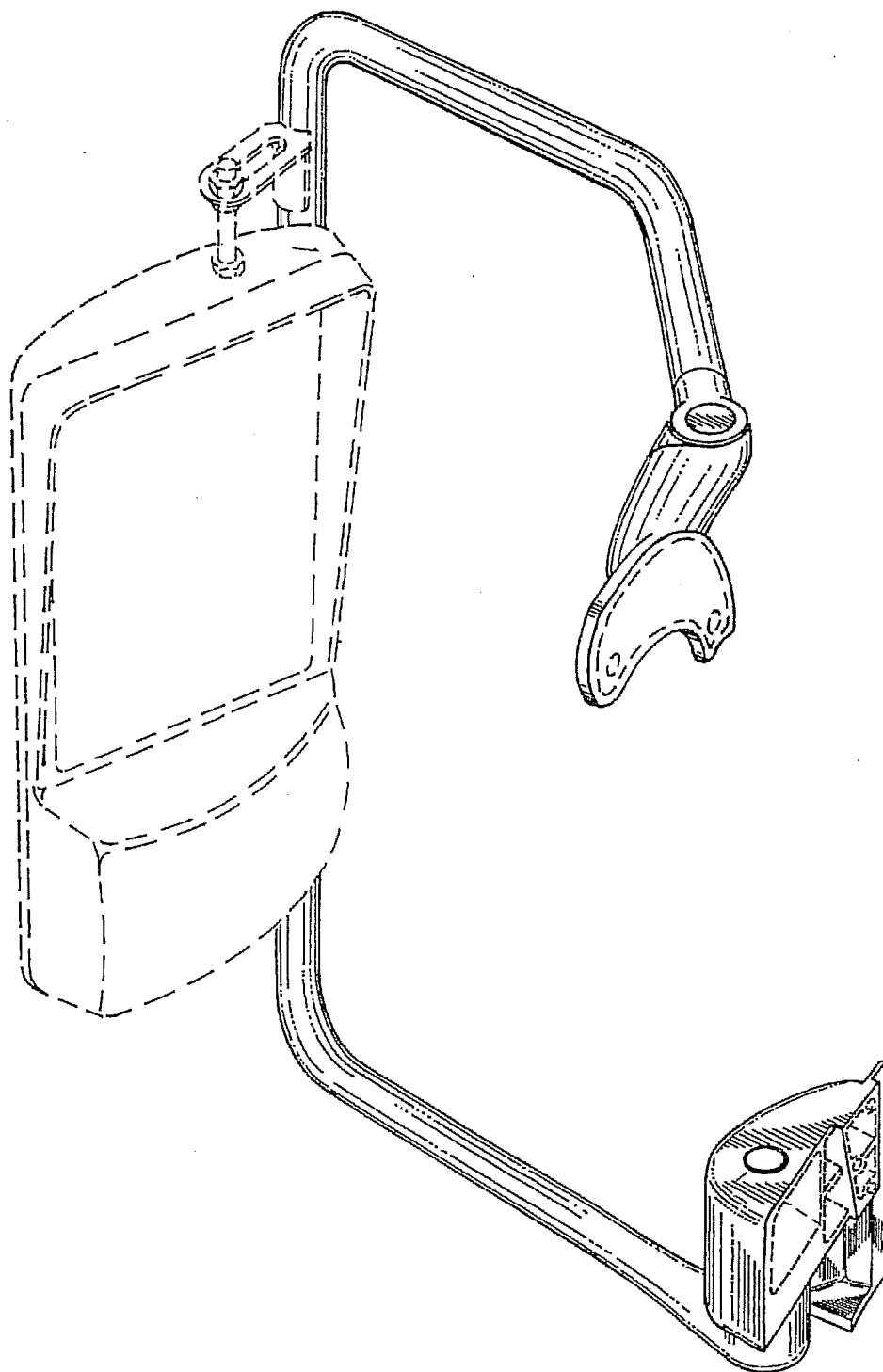


Fig. 12

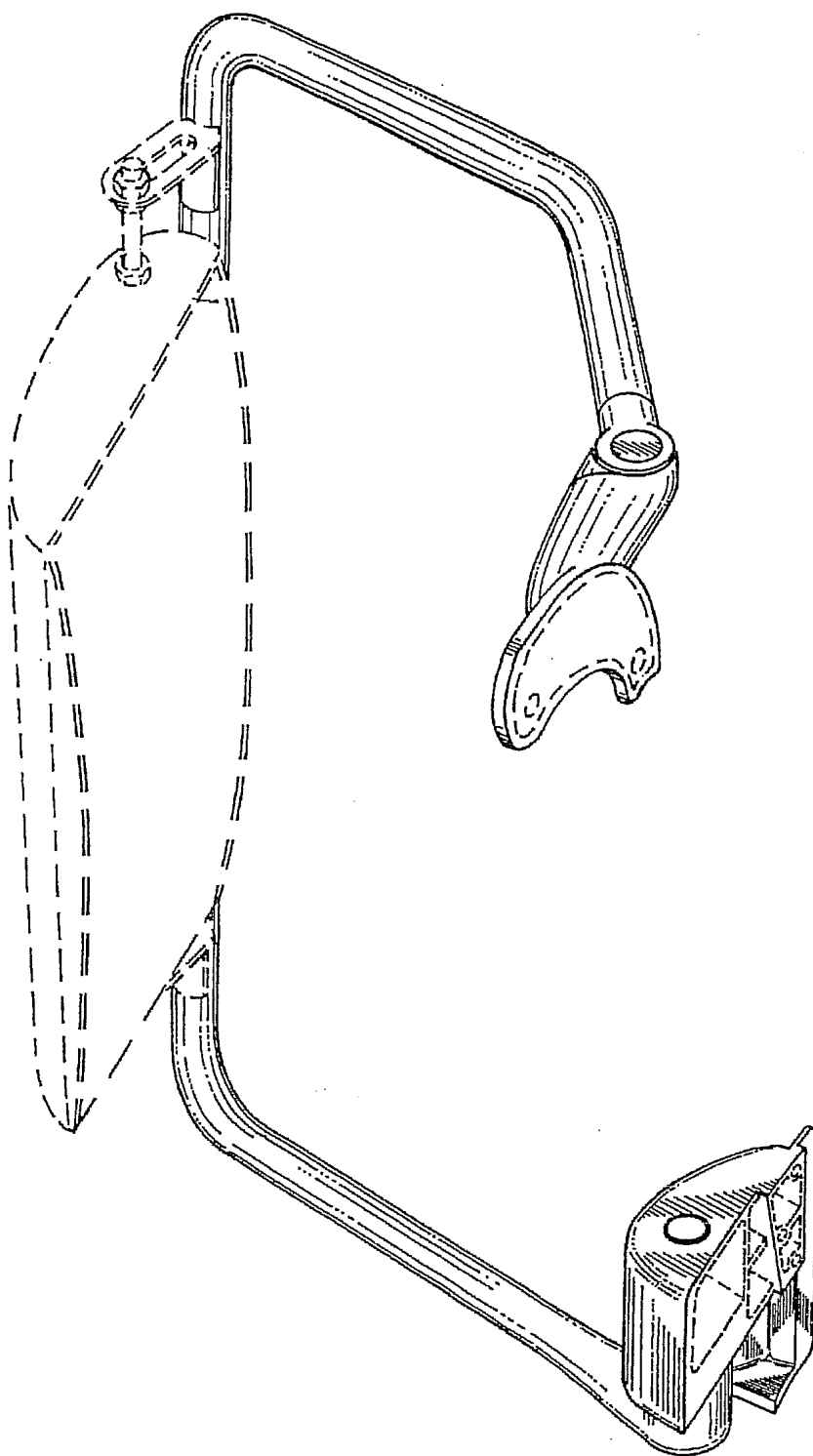


Fig. 13

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : Des. 452,671 S
DATED : January 1, 2002
INVENTOR(S) : Heinrich Lang

Page 1 of 2

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Title page.

Item [56], **References Cited**, should read:

-- U.S. PATENT DOCUMENTS

4,951,913 A	8/1990	Quesada
4,991,814 A	2/1991	Schmidt, et al.
4,991,950 A	2/1991	Lang, et al.
5,044,596 A	9/1991	do Espirito Santo
5,044,739 A	9/1991	do Espirito Santo
5,081,546 A	1/1992	Bottrill
5,120,015 A	6/1992	do Espirito Santo
5,137,247 A	8/1992	Lang, et al.
5,268,796 A	12/1993	Tomerlin, et al.
5,483,385 A	1/1996	Boddy
5,566,030 A	10/1996	Yue
5,615,054 A	3/1997	Lang, et al.
5,621,577 A	4/1997	Lang, et al.
5,687,035 A	11/1997	Lang
5,760,980 A	6/1998	Lang
5,823,501 A	10/1998	Schmidt, et al.
5,880,895 A	3/1999	Lang, et al.
5,889,627 A	3/1999	Englander, et al.

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : Des. 452,671 S
DATED : January 1, 2002
INVENTOR(S) : Heinrich Lang

Page 2 of 2

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

OTHER PUBLICATIONS,

Brochure: "Increase Blindsided Vision. Improve Safety and Savings!," MOTOR MIRROR INCORPORATED, Arlington, Texas, 1990.

Brochure: "Expand Your Vision Without Looking for Trouble!," MOTOR MIRROR INCORPORATED, Arlington, Texas, 1990.

Brochure: "Fleet Products", VELVAC, INC., 1995.

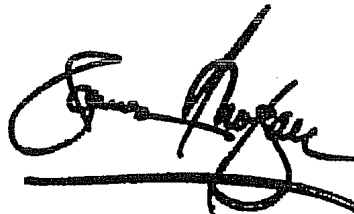
Brochure: "The Tracker Remote Control Mirror", Cham-Cal Engineering Co., prior to Oct. 1997.

Brochure: "Take A Look At The Pro View Motorized Mirrors From Retractable Mirror", prior to Oct. 1997. --

Signed and Sealed this

Twenty-fourth Day of September, 2002

Attest:

A handwritten signature in black ink, appearing to read "James E. Rogan", written over a horizontal line.

Attesting Officer

JAMES E. ROGAN
Director of the United States Patent and Trademark Office

X – Related Proceedings Appendix

None.